AT

UNITED
NATIONS

Administrative Tribunal

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21 November 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 791

Case No. 875: KARMOUL

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Francis Spain; Ms. Deborah Taylor Ashford;

Whereas, at the request of Akram J. Karmoul, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 March, 30 June and 30 September 1995, the time-limit for the filing of an application to the Tribunal;

Whereas, on 15 September 1995, the Applicant filed an application containing, inter alia, the following pleas, requesting the Tribunal:

"8. ...

(a) To find that the administrative decision not to renew the Applicant's fixed-term appointment with ESCWA [the United Nations Economic and Social Commission for Western Asia] beyond its expiration on 18 October 1993 was irreparably flawed by various forms of abuse of power (détournement de pouvoir),

(b) To order the Secretary-General to grant to the Applicant, with retroactive effect, a further two-year fixed-term appointment with ESCWA,

(c) Alternatively, should the Secretary-General decline to comply with such a decision, to compensate the Applicant for the violation of his rights as well as for the

denial of his pension benefits to which he would have become entitled one year after his improper separation from United Nations service,

(d) In either case, to award to the Applicant compensation for the slander to which he has been subjected and for the moral and physical suffering to which he and his family have been exposed as a result of the glaring abuse of power by the ESCWA Administration in the present case."

Whereas the Respondent filed his answer on 7 November 1995;

Whereas the Applicant filed written observations on 10 March 1996;

Whereas the facts in the case are as follows:

The Applicant, a Jordanian national, entered the service of the United Nations Economic and Social Commission for Western Asia (ESCWA) at the ESCWA/United Nations Organization for Industrial Development (UNIDO), Industry Division, on 19 October 1989, on an 11 month fixed-term appointment at the D-1 level. His appointment was extended successively for periods of 13 months, three months and one year and nine months, until 18 October 1993. On 18 October 1991, the Applicant's functional title became Chief, Joint ESCWA/UNIDO Industry and Technology Division.

By a letter dated 12 September 1993, the Applicant was informed by the Chief, Division of Administration, that the Executive Secretary had decided not to recommend the extension of his fixed-term appointment. On 13 September 1993, the Applicant requested the Secretary-General to review this decision. In a memorandum dated 11 October 1993, the Director of Personnel, Office of Human Resources Management at Headquarters, asked the Executive Secretary to reconsider his decision.

On 17 October 1993, a meeting took place attended, inter alia, by the Executive Secretary and the Applicant. A note containing the following was prepared on the same date:

"The Executive Secretary referred to a study prepared in Jordan which was regarded as technically unsatisfactory by the Government of Jordan. He also reiterated the allegation related to [the Applicant's] use of the Division's secretaries for personal work related to his private business ... The Executive Secretary reiterated his final position and wished [the Applicant] luck ..."

On 18 October 1993, the Chief, Division of Administration, ESCWA, confirmed to the Applicant his separation from service.

By a letter to the Acting Chief of Personnel, dated 21 October 1993, the Applicant disputed the content of the note of the 17 October 1993 meeting, stating that he was not aware of such a study on Jordan and had not participated in the preparation of any such study.

On 21 January 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB) against the administrative decision not to renew his fixed-term appointment. The JAB adopted its report on 17 August 1994. Its conclusions and recommendations read as follows:

"...

Conclusions and Recommendations

24. The Panel concluded that the decision not to renew the Appellant's contract did not violate his rights, including his right to due process.

25. The Panel also concluded that under the terms and conditions of the Appellant's employment, he had no right to the renewal of his appointment and that he was not given any reasonable expectancy of continued employment by the Organization.

26. Accordingly, the Panel recommends that the Appeal be rejected."

On 24 August 1994, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "The Secretary-General has re-examined your case in the light of the Board's report and concurred with the Board's unanimous recommendations. The Secretary-General has decided, therefore, to reject your appeal."

On 15 September 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The reason given to the Applicant for the non-renewal of his appointment was specious and untruthful and, therefore, vitiated the contested decision.

2. The Executive Secretary was biased against Jordanian nationals, as was documented by Jordanian newspaper articles.

Whereas the Respondent's principal contentions are:

1. The Applicant's fixed-term appointment carried no expectancy of renewal after its expiration date.

2. The Applicant has adduced no evidence of prejudice or improper motivation as a basis for the non-renewal of his appointment and has therefore failed to discharge his burden of proof.

The Tribunal, having deliberated from 24 October to 21 November 1996, now pronounces the following judgement:

I. The Applicant worked for the United Nations Economic and Social Commission for Western Asia (ESCWA) under a succession of fixed-term contracts.

On 12 September 1993, he was informed that the Executive Secretary had decided not to renew his fixed-term contract after 18 October 1993, its date of expiration.

The letter from the Chief, Division of Administration, conveying this information to the Applicant, added that "this situation has been created following the decision taken by the Executive Secretary, in consultation with the Secretary-General, that [ESCWA] undergo a recycling of its human resources, with a view to continuing energizing its secretariat."

On 17 October 1993, i.e., one day before the date of expiration of the Applicant's contract, the Applicant met with the Executive Secretary. According to the Note for the file signed by the Acting Chief of Personnel, in the course of this meeting "[the Applicant] inquired about the reasons for maintaining the [non-renewal] decision." The Executive Secretary referred to a study prepared on Jordan which was regarded as technically unsatisfactory by the Government of Jordan. He also reiterated the allegation related to the Applicant's use of the Division's secretaries for personal work, related to his private water company.

II. The Applicant claims that, in view of the circumstances, the administrative decision not to renew his fixed-term contract "was irreparably flawed by various forms of abuse of power (détournement de pouvoir)."

Before considering this allegation, the Tribunal bore in mind the principle clearly expressed in staff rule 104.12(b) and in the letters of appointment, that fixed-term contracts carry no expectancy of renewal. Furthermore, according to the Tribunal's jurisprudence, good performance does not create a legitimate expectancy of renewal.

Although, therefore, the Administration has the discretion not to renew a fixed-term contract, such discretion must be exercised exclusively in the interest of the Organization. The Respondent's decisions can be challenged by staff members claiming that non-renewal was not effected in the interest of the Organization but for other motives.

III. The Tribunal has held on various occasions, following its Judgement No. 142, Bhattacharyya (1971), that cases involving the non-renewal of fixed-term contracts should take into consideration all the circumstances surrounding the non-renewal. The Tribunal has, therefore, to determine, having examined the different circumstances, whether the contested decision in this case was taken in the interest of the Organization.

IV. The Tribunal examined the different reasons mentioned in connection with the non-renewal of the Applicant's fixed-term contract. The first reason was the intended recycling of human resources in ESCWA. This recycling was allegedly decided by the Executive Secretary in consultation with the Secretary-General. No evidence has been submitted either to show that a plan of comprehensive recycling had been approved or that it followed consultations with the Secretary-General. On the contrary, the report on the Programme and Administrative Practices of the Regional Commission for Africa and Western Asia submitted by a team of the Office of Inspections on 16 November 1993, included the following statement:

> "The team noted that ESCWA had initiated a process of staff replacement which, as an initial step, resulted in the separation or proposed separation, of a number of staff through non-extension of their appointments ... However, the non-extension of the appointments referred to did not appear to respond to any defined project of quality improvement or indeed to any other discernible pattern."

Furthermore, on 11 October 1993, a few days before the Applicant separated from service, the Director of Personnel requested the Executive Secretary to review his decision "as reasons put forth for non-renewal are not particularly sound." The Director of Personnel did not mention the recycling plan.

V. During the 17 October meeting between the Applicant and the Executive Secretary, two further reasons were given for the non-renewal of the contract. The first was the study prepared on Jordan which was regarded as unsatisfactory by the Jordanian Government. The Applicant denies having been in any way connected with such a study and even contests its existence. No evidence to the contrary has been submitted by the Respondent.

The other reason invoked was the alleged use by the Applicant of the Office's secretaries for work related to the Applicant's private business. In this respect, the Applicant was informed on 15 November 1993, roughly a month after his separation, that the Administration had been "able to retrieve from the PC Directory of the Industry Division a part of a document which is in direct relation to your private business." The Chief, Division of Administration, added that "[the Applicant's] engagement in this outside occupation, using in addition the resources of the Division, is contrary to the expectations from a United Nations staff member ..."

The Applicant asserts, in response to this accusation, that the document in question was a paper written by his daughter for the University of Jordan. In support, the Applicant has submitted the original document typewritten by his daughter, adding that "at [the Applicant's daughter's] request, a secretary in the Industry Division of ESCWA had kindly agreed to transfer to diskette, a procedure that does not require more than one or two minutes." The Respondent does not contradict these assertions.

VI. In view of the above, the Tribunal finds that these circumstances point to the existence of animosity against the Applicant. Such animosity constitutes an extraneous factor sufficient to suggest an inference that the decision not to renew the Applicant's fixed-term contract was based on personal motives and was not in the best interests of the Organization.

VII. The Applicant also alleges that he had a legitimate expectancy that his contract would be renewed, principally based on the 11 October 1993 letter from the Director of Personnel to the Executive Secretary. The Tribunal has examined that letter and finds that no expectancy of renewal could have arisen.

VIII. Having found that the non-renewal of the Applicant's fixed-term contract was tainted by extraneous motives, the Tribunal has decided to award the Applicant compensation.

IX. For the foregoing reasons, the Tribunal orders the Respondent to pay the Applicant $5,000.

X. All other pleas are rejected.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Francis SPAIN
Member

Deborah Taylor ASHFORD
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary